

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 3-26-03 / Item no: 3.g.

File Number
CP02-049

Application Type
Conditional Use Permit

Council District
9

Planning Area
Cambrian / Pioneer

Assessor's Parcel Number(s)
458-17-016

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Dipa Chundur

Location: East side of Almaden Expressway 500 feet northerly of Chynoweth Avenue

Gross Acreage: 11.6

Net Acreage: N/A

Net Density:

Existing Zoning: CG Commercial General

Existing Use: Retail Center / Parking Lot

Proposed Zoning: No change

Proposed Use: Restaurant with drive through use

GENERAL PLAN

Completed by: Dipa Chundur

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Dipa Chundur

North: Commercial / Retail Use

CG Commercial General

East: Retail/ Open Space

A(PD) Planned Development

South: Vacant /Commercial

A(PD) Planned Development

West: Commercial and Senior Housing

CP-Commercial Pedestrian & A(PD) Planned Development

ENVIRONMENTAL STATUS

Completed by: Dipa Chundur

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Mitigated Negative Declaration Circulated on February 13th 2003
☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: Dipa Chundur

Annexation Title: Robertsville No. 18

Date: 09/06/1968

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date:

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/OWNER/DEVELOPER

Peter Ko, AIA
Ko Architects, Inc.
900 High Street Suite 1
Palo Alto, CA 94301

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Dipa Chundur

Department of Public Works

Initial memo

Other Departments and Agencies

Valley Transportation Authority

GENERAL CORRESPONDENCE

E-mail from Dave Puett

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Almaden Properties, LLC, is requesting a Conditional Use Permit to allow construction of a new 3,784 square foot fast food restaurant (McDonald's) with drive-through use on a 11.6 gross acre site. A drive-through use in conjunction with any use in the CG Commercial District requires an Conditional Use Permit. The project also includes a request to begin operation at 5:00 a.m. instead of 6:00 a.m. which is allowed by right.

The subject site is currently developed with a large retail building, built in the 1960's, located near the back of the site. A large parking lot separates this existing building from Almaden Expressway. A Rotten Robbie gas station is also located on the existing shopping center parcel near the southwest corner of the site adjacent to the intersection of Chynoweth Avenue and Almaden Expressway.

Surrounding land uses are generally commercial in nature, except for a senior housing complex located on Luchessi Way, a frontage road that parallels the westerly side of Almaden Expressway.

A Permit Adjustment (AD02-1114) for parking lot reconfiguration and landscape improvements was recently approved for this site. The current shopping center owner, Joshua Kwan of Almaden Properties, LLC intends to provide these improvements independent from the subject McDonald's Restaurant project. This Conditional Use Permit, however, is based on the fulfillment of the requirements of the adjustment. The property owner has also engaged in preliminary discussions for the remodel of the overall retail center upon completion of the McDonald's project.

There is an existing monopole near the rear of the site with an expired permit. However, a new permit application (CP03- 016) for the "renewal" was recently filed. This monopole would most likely be time conditioned and/or architecturally integrated with any future facelift proposal of the shopping center. See analysis for additional discussion.

Project Description

The proposed restaurant building would displace a portion of the existing parking lot near Almaden Expressway at the north side of the site. The building is proposed to be set back approximately 30 feet

from Almaden Expressway. A small amount of outdoor dining area is proposed along the southerly side the building adjacent to the restaurant's primary field of parking. The drive-through lane generally wraps around the back and north side of the proposed building. A portion of the drive-through lane features a "double" stacking lane which provide stacking for up to 12 vehicles. The restaurant will accommodate approximately 82 seats. The proposed hours of operation would be 5:00 a.m. to 12:00 midnight.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration was circulated on February 13th 2003. Mitigation measures are included in the project to reduce potentially significant effects associated with air quality, archaeology and geology. As part of the environmental analysis for the project, impacts from traffic and noise were also evaluated.

A traffic report was prepared for this project by Pang Engineers on August 28, 2002 which concluded that due to the small size of the project, and relationship of the new project away from the signalized intersections that no significant level of service (LOS) impacts would be created. An in-house traffic distribution analysis was also performed by the City's Department of Public Works which verified the conclusion by the traffic consultant. As a result, no mitigation is required.

A noise report is often required for this type of project when in close proximity to a residential use, but since the physical separation of the proposed drive through use, specifically the drive through lane/pick-up window from the nearest residential unit is located 290 feet across a significant traffic thoroughfare (Almaden Expressway), a noise report was not required. The City had recently considered a similar proposal for a McDonald's restaurant at the corner of Almaden Expressway and McAbee Road, which was located about 180 feet from the nearest residential use and separated by a relatively "quieter" section of Almaden Expressway. The noise report for this project concluded that the noise levels generated from the drive-through use would not exceed those from the intervening roadway.

GENERAL PLAN CONFORMANCE

The proposed commercial use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Regional Commercial.

ANALYSIS

The proposed project was analyzed for conformance to the following: 1) Zoning Ordinance, 2) Commercial Design Guidelines, and 3) Council Policy 6-10: Drive-Through Uses.

Zoning Ordinance

The project conforms to all relevant development standards with regard to setback and height standards for the CG Commercial General Zoning District. Further, the project proposes a total of 36 parking spaces within the "lease area" of the site. Since the proposed building is located on the same parcel as the main shopping center itself, a parking analysis was provided to evaluate parking requirement compliance with the overall center. Despite the displacement of approximately 64 parking spaces by the new restaurant building, the overall center more than adequately complies with the applicable Zoning Ordinance parking requirements.

Under the CG Commercial General zoning regulations, a Conditional Use Permit is required in order for a commercial establishment to operate between the hours of 12:00 Midnight and 6:00 a.m. This permit will allow extended hours of operation so that the proposed restaurant may open at 5:00 a.m. The proposed use does not propose to operate past 12:00 midnight. Given the distance from the nearest residential unit it is not likely that any noise nuisance problems would occur. Additionally, the Police Department did not identify any concerns with this proposal.

This project includes a number of attached signage and directional signs that conform to the City's sign regulations. A new freestanding sign is not proposed for the restaurant since any additional such sign(s) in conjunction with other existing freestanding signs for the shopping center would be in excess of that which is allowed.

There is an existing wireless communication antenna (monopole) at the rear of the site. The monopole, approved in 1996 (file no. CP96-07-064) but has since expired. A new Conditional Use Permit (file no. CP03-016) has been filed to re-establish this use. It is expected that prior to the occupancy of this restaurant that the legal status of the monopole be fully rectified. Staff will be investigating design alternatives beyond just a simple re-approval of the existing monopole such as co-location of antennas onto a neighboring monopole and/or incorporation within new architectural elements of the center as part of a planned future remodel.

Commercial Design Guidelines

The proposed site plan is consistent with the Commercial Design Guidelines (CDGs) for drive through restaurant in terms of site organization, building location and design, drive-through orientation, parking, and site circulation.

Consistent with the CDGs, the McDonald's building is proposed close to the street to establish good street presence and to help break up a very large expanse of parking area along Almaden Expressway. A unique "double lane" vehicle stacking area is proposed for the drive-through lane. This double lane provides a more compact stacking configuration and avoids what could otherwise be a long, serpentine stacking lane that might potentially inhibit or disrupt cross circulation within the larger overall parking area.

As previously indicated, a permit adjustment (file no. AD02-1114) was recently approved for the renovation of the entire front parking area for the overall center. The adjustment established an improved and more efficient hierarchy of driveways to better serve the overall center. Substantial tree planters are included in the adjustment proposal along with larger shade trees. Under this Conditional Use Permit, implementation of the permit adjustment is a specific requirement to ensure that the restaurant isn't constructed without appropriate commensurate upgrades to the overall center. This approved adjustment did not specifically address the replacement of light fixtures with lower, more current light fixtures. Therefore, this permit will require the subsequent approval of an adjustment to appropriately resolve this matter.

The proposed drive-through restaurant provides a good architectural design compared to typical designs of the past. The drive-through lane, which by operational function, must "hug" the edge of the building somewhat limits the architectural opportunities to articulate the side of the building next to the pick-up window. As with a few other recently approved drive-through restaurant buildings, the greater use of architecturally integrated overhead roof canopies and abutting trellises, such as proposed, has dramatically improved the overall quality of the architecture.

The overall architecture of the building is a good improvement to begin updating the appearance of the shopping center. The property owner has expressed interest in remodeling the balance of retail center. Prior to the filing of this application, staff has worked with the property owners on a preliminary basis to discuss a number of design concepts. It is staff's expectation that the design of the proposed restaurant will establish the architectural concept for the future remodel. As part of the eventual remodel, site design and landscape upgrades to the gas station facility and rear side of the shopping center should be provided. The City previously approved upgrades to the Safeway façade with an understanding that the property owner would be required to bring the site into conformance with current standards at the time of subsequent permit application.

Council Policy 6-10: Drive-Through Uses

The proposed drive-through is consistent with key elements of the City Council Policy for Drive-Through Uses. The "double" drive-through stacking lane provides adequate capacity for up to 12 cars, which exceed the recommendations in the Policy. The policy requires that stacking for up to eight (8) cars be provided in a dedicated staking lane. To the degree that overflow might occur on occasion, such stacking would not impacts driveways adjacent to the public right-of-way.

The policy recommends that all drive-through uses should be 200 feet or more from immediately adjacent or directly opposite residentially used, zoned or General Plan designated properties. This project complies with this policy in that the closest residential property is located 290 feet away on Luchessi Drive, a frontage road adjacent to the opposite side of Almaden Expressway. The intent of the policy is to provide adequate distance or buffer between the residential use and a drive through use in order to minimize noise impacts. The closest residential use to the east is located over 800 feet away behind the existing retail center and across the Guadalupe River. Based on noise studies performed for other comparable projects, as described in the "Environmental Review" section of this report, it is unlikely that there would be any noise impacts on any nearby residential uses.

PUBLIC OUTREACH

Notices for the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss potential concerns raised by members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The project site is located on a 11.6 -gross-acre parcel in the CG Commercial General Zoning District.
3. The project site is currently developed with as a parking lot.
4. The project site as proposed includes 624 parking spaces.

5. The project site includes a 139,000 square feet of retail uses, a 1,600 square foot gas station and a proposal for a 3,784 square foot (82 seat) fast food restaurant.
6. A permit adjustment (file no. AD02-1114) for renovation and landscape improvements to the entire parking area of the project site between the main commercial building and Almaden Expressway has been previously approved.
7. The subject Conditional Use Permit includes conditions require that implementation of the above mentioned adjustment permit as a construction condition for this project.
8. This project site includes a wireless communications antenna (monopole) that has an expired permit.
9. This project includes a condition to remove or legalize the above mentioned monopole prior to the issuance of an occupancy permit.
10. The proposed drive-through lane provide stacking for up to 12 vehicles.
11. The proposed McDonald's building is located 290 feet from the closest residential use across Almaden Expressway.
12. The proposed hours of operation are from 5:00 a.m. to 12:00 midnight.
13. The proposed project has an adopted Mitigated Negative Declaration.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the site's designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with applicable provisions of the Zoning Ordinance.
3. The proposed project conforms to the Commercial Design Guidelines.
4. The proposed project conforms to the City Council Policy for Drive-Through Uses.
5. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. As conditioned, the proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit, except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Except as noted in Condition #2 & 3, below, development of the site shall conform to approved development plans entitled "CP02-049," (last revised March, 2003), on file with the Department of Planning Building and Code Enforcement.
2. **Implementation of Permit Adjustment (file no. AD02-1114) Required.** Prior to the issuance of an Occupancy Permit or a Tentative Map the applicant is required to implement said Permit Adjustment for overall parking lot site design and landscape improvements to the satisfaction of the Director of Planning. Failure to comply with this condition shall render this Permit null and void.
3. **Additional Permit Adjustment Required.** The developer shall secure and agree to implement an adjustment to fully modify and retrofit the parking lot lighting in accordance with current City standards for the entire retail center prior to the issuance of a building permit.

4. **Legalization of Existing Monopole.** Prior to the issuance of an Occupancy Permit, the developer shall remove or secure all permits related to continued lawful operation of existing monopole on the site.
5. **Future Remodel of Existing Retail Center.** As part of, or prior to the approval of any subsequent discretionary permits for the remodel of the existing center, the applicant has agreed that said remodel shall include the full and complete renovation of the existing gas station and surrounding lease area, as well as site design and landscape upgrades to the rear area of the shopping center, to be done in conformance to the City's Commercial Design Guidelines.
6. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.
7. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
8. **Hours of Operation.** This project shall be allowed to operate between the hours of 5:00 a.m. and 12:00 midnight.
9. **Signs.** Signs as shown on the plan set are hereby approved. Any other new proposed signs shall conform to the Sign Ordinance and shall be subject to approval by the Director of Planning via a subsequent Permit Adjustment.
10. **Flag Pole.** One flag pole is permitted as part of this project. Said flagpole shall only be used to fly the American Flag. The height of the flagpole shall not exceed the height of the building.
11. **No Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
12. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
13. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
14. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
15. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
16. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).

- b. *Construction Plans.* This permit file number, CP02-049, shall be printed on all construction plans submitted to the Building Division.
 - c. *Permit Adjustment.* The developer shall comply with all conditions related to monopole legalization and implementation of the parking lots renovation adjustments as described in conditions no. 2,3 & 4 of this permit.
17. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-01184) to the satisfaction of the Director of Public Works:
- a. *Sewage Fees.* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b. *Geology.* The project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard to liquefaction must be submitted to, reviewed and approved by the Project Engineer and/or City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" Report). A recommendation depth of 50 feet should be explored and evaluated in the investigation.
 - c. *Grading Permit.* A Grading Permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - d. *Street Improvements.* Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project. Remove and replace broken or uplifted curb, gutter and sidewalk along project frontage. Improvements of the public streets shall be to the satisfaction of the Director of Public Works. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - e. *Minor Improvement Permit.* The applicant will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes plans, insurance, bonds/deposit certificate, and engineering and inspection fees.
18. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State

law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

19. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
20. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.
21. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
22. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
23. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
24. **Lighting.** All new outdoor lighting on the site shall conform to the City's Outdoor Lighting Policy and shall use low-pressure sodium (LPS) lighting fixtures.
25. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
26. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
27. **Amplified Sound.** No amplified sound shall be audible from adjacent properties. All outdoor paging of employees shall be achieved with individual devices given to employees. No outdoor paging systems are to be installed.
28. **Mechanical Equipment.** All roof equipment shall be screened from view.

29. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

Attachments

cc: Peter Ko, AIA, Ko Architects, Inc., 900 High Street Suite 1, Palo Alto CA 94301